



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/523,438

09/14/2005

Harald Albrecht

P30826

7528

7055 7590 09/08/2008
GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

09/08/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary	Application No. 10/523,438	Applicant(s) ALBRECHT ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/14/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election of Group I, claims 1-8, 11-17 in the reply filed on July 2, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 9-10, 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Abstract of the Disclosure

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is not written in one paragraph. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-2, 5-8, 11-13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneda et al. (US 2001/0046948), hereinafter “Kaneda”.

Kaneda teaches a cleansing material comprising a sheet material (which reads on wipe) impregnated with an emulsion having a viscosity of 200 to 4000 mPas at 25° C and a viscosity of 100 to 2000 mPas at 50° C (see abstract). The emulsion contains at least an oily component, water, and a surfactant (see paragraph 0015 on page 2). The content of water in the emulsion ranges from 10 to 80% by weight (see paragraph 0018 on page 2), and the content of the surfactant ranges from 0.5 to 10% by weight (see

Art Unit: 1796

paragraph 0019 on page 2), and two or more surfactants may be used in combination, like nonionic and anionic surfactants (see paragraph 0020 on page 2). The sheet material preferably is impregnated with the emulsion at a ratio of from 1 to 80 g, and still more preferably from 2 to 5 g, per gram of the sheet material (see paragraph 0032 on page 3). The cleaning material can be produced by applying the emulsion to the sheet material by dropping the emulsion from a nozzle, or by spraying it, and then allowing the sheet to stand so as to allow the emulsion to sufficiently impregnate into the sheet material (see paragraph 0033 on page 3). In Example 1, Kaneda teaches a sheet material impregnated with 1.2 g of an emulsion (see paragraph 0038 on page 3) comprising 2.0 wt% polyoxyethylene sorbitan monostearate (20 EO) (a nonionic surfactant), 1.0 wt% aluminum dialkylphosphate (an anionic surfactant, whose ratio with the nonionic surfactant is 1:2 or 2:4), 0.1 wt% methyl paraben (i.e., methyl p-hydroxybenzoate), 0.1 wt% propyl paraben (i.e., propyl 4-hydroxybenzoate), (both of which are preservatives), and the balance purified water (37.8 wt%), see Table 1 on page 5. The viscosity of the emulsion of Example 1 is 1500 mPas at 25° C and 600 mPas at 50° C (see Table 2 on page 5). See also Examples 2-4 in Table 1 on page 5. In Example 3, the anionic surfactant is 1.5 wt% and the nonionic surfactant is 1.0 wt%, hence, the ratio of the anionic to nonionic surfactant reads on claim 17. Kaneda teaches the limitations of the instant claims. Hence, Kaneda anticipates the claims.

6. Claims 1-2, 5, 7, 8, 11-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Drucks et al. (US 2002/0102289), hereinafter "Drucks".

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Drucks teaches cosmetic and dermatological wipes which have been moistened with cosmetic and dermatological impregnation solutions which have a viscosity of less than 2000 mPas (see abstract). The impregnation solutions comprise one or more washing-active surfactants (see paragraph 0070 on page 3) in the range from 5 to 25% by weight (see paragraph 0071 on page 3); and preservatives which are usually between about 0.0005% and 1% active content (see paragraphs 0072-0073 on page 3). In Example 12, Drucks teaches a wipe wherein the impregnating solution comprises 6.5 wt% cetareth-20 (a nonionic surfactant); 1 wt% paraben (a preservative); 1 wt% C12-15 alkyl benzoates (which also reads on the preservative); and balance water (i.e., 64.5 wt%), see paragraph 0220 on page 15. Drucks also teaches that the weight ratio of the unimpregnated wipe to the impregnation solution is chosen from the range from 1:1 to 1:5 (see claim 2). Drucks teaches the limitations of the instant claims. Hence Drucks anticipates the claims.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 3, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneda as applied to the above claims.

Kaneda teaches the features as described above. In addition, Kaneda teaches that the nonionic surfactants include polyoxyalkylene fatty acid esters, and the anionic surfactants include sulfosuccinic acid-type surfactants; α -olefinsulfonate-type surfactants, acylated amino acid-type surfactants and alkylphosphoric acid ester-type (see paragraph 0020 on page 2). Kaneda, however, fails to specifically disclose an

Art Unit: 1796

emulsion comprising acylamino acid surfactants, sulfosuccinates, or olefin sulfonates as the specific anionic surfactants, and the proportions of water in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected acylamino acid surfactants, sulfosuccinates, or olefin sulfonates as the specific anionic surfactants because these are some of the suitable selection of anionic surfactants taught by Kanedo in paragraph 0020 on page 2.

With respect to the amount of water, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range (i.e., 10 to 80 wt%; see paragraph 0018 on page 2) which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEF 2131.03 and MPEP 2144.05I.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneda as applied to claim 1 above, and further in view of McAtee et al. (US 2002/0009484), hereinafter "McAtee.

Kaneda teaches the features as described above. Kaneda, however, fails to specifically disclose alkyl polyglycosides as the nonionic surfactants.

McAtee, an analogous art, teaches the equivalency of alkoxyated fatty acid esters with alkyl polyglucosides as nonionic surfactants (see paragraph 0126 on page 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyoxyalkylene fatty acid esters of Kaneda with alkyl polyglucosides because the substitution of art recognized equivalents as shown by McAtee is within the level of ordinary skill in the art.

11. Claims 3-6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drucks as applied to the above claims.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject

Art Unit: 1796

matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Drucks teaches the features as described above. In addition, Drucks teaches that the anionic surfactants to be used advantageously include acylamino acids and salts thereof (see paragraph 0034 on page 2); sarcosinates (see paragraph 0037 on page 2); phosphoric acid esters and salts (see paragraph 0043 on page 3); olefinsulphonates; or sulfosuccinates (see paragraphs 0047-0048 on page 3). Nonionic surfactants to be used advantageously include alkyl polyglycosides (see paragraph 0069 on page 3). Some examples of preservatives are benzoic acid, sodium benzoate, potassium benzoate or calcium benzoate (see paragraph 0079 on page 4). Antioxidants may also be added in an amount from 0.001 to 30% by weight, based on the total weight of the preparation (see paragraph 0085 on page 4), for example, acetylsalicylic acid (see paragraph 0089 on page 5). Drucks, however, fails to specifically disclose an impregnation solution comprising anionic surfactants like acylamino acid surfactants, sarcosinates or sulfosuccinates; or nonionic surfactants like alkyl polyglycoside; benzoic

Art Unit: 1796

acid as the preservative and the ratio of the anionic to nonionic surfactants as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate anionic surfactants like acy amino acid surfactants, sarcosinates or sulfosuccinates; nonionic surfactants like alkyl polyglycoside; and benzoic acid as the preservative because these components are the suitable selection of ingredients taught by Drucks and to optimize the proportions of the anionic and nonionic surfactants through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

Art Unit: 1796

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796